

**IN THE UNITED STATES DISTRICT COURT  
FOR THE  
MIDDLE DISTRICT OF ALABAMA**

**SUSAN S. DEPAOLA, Chapter 7 Trustee  
for the Bankruptcy Estate of Philip L.  
Goodwyn, and SIMPLE PLEASURES,  
INC.,**

**Plaintiffs,**

**v.**

**V RESTAURANTS, INC., an Alabama  
corporation, and VINCE SAELE, an  
individual,**

**Defendants.**

**Case Number: 06-00893-WKW-SRW**

**Bankruptcy Case No. 05-32325 –  
Chapter 7, Bankruptcy Adv. Pro. No.  
05-03062-WRS**

**PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION  
TO SET ASIDE PRETRIAL ORDER**

COME NOW the Plaintiffs, Susan S. DePaola and Simple Pleasures, by and through counsel, and for response to the Defendants' motion to set aside pretrial order, say as follows:

1. The court entered an order, February 14, 2007 (ECF Doc. 12) setting a final pretrial conference for February 23, 2007 and requiring a proposed pretrial order, February 21, 2007.
2. The undersigned received an email with an attachment listing the Defendants' inputs, February 20, 2007 at 4:57 PM.
3. A return email was sent to counsel for the Defendants to coordinate the next day's availability for both parties counsel, February 20, 2007 at 5:00 PM and counsel for Defendants returned the email at 5:19 stating that he would be in his office all day and available for coordination on the order.
4. An email was sent by the undersigned with a proposed draft that included the Defendants inserts, February 21, 2007, at 10:47 AM.

5. A follow-up email was sent by the undersigned at 2:09 PM suggesting that time was getting short.

6. The undersigned received an email from a secretary in the office of counsel for the Defendants, Ms. Kathy Ryan, with a copy of the draft sent to the Defendants attached and a second attachment with their proposed changes attached, February 21, 2007, at 4:21 PM.

7. The changes were reviewed with Mr. Memory and he agreed with the changes proposed by counsel for the Defendants. The final editing required several stipulations identified by "line through text" to be deleted, highlighting to be removed, and a "DRAFT" watermark removed from the document.

8. The final document was sent as an attachment, in Microsoft Word file type (pursuant to the court's order) to chambers, February 21, 2007, at 5:14 PM. At this point, the document was in the coordinated and approved (by the parties) format.

9. An email was sent to Ms. Ryan stating that the indicated stipulations, highlighting, and watermark were removed, February 21, 2007, 5:21 PM.

10. On February 22, 2007, 8:55 AM, the undersigned received a call from chambers stating that they were unable to open the Microsoft Word file format and would need the file in WordPerfect format. Because this firm has not maintained a current version of WordPerfect for over five years and was not able to convert the file to WordPerfect format using Word, an immediate search was initiated for someone who had a copy of WordPerfect.

11. Ultimately, a trial version of WordPerfect was downloaded and installed on the undersigned's computer. However, in the process of file conversion, a previous version of the order was opened in WordPerfect and saved in WordPerfect format.

12. This incorrect version of the order was sent to chambers, February 22, 2007, at 10:58 AM. The undersigned takes full responsibility for this error, apologizes for this incorrect version being sent to chambers, and avers that there were no ulterior motives involved with this incorrect version being sent.

13. With respect to the existing pretrial order, setting aside the existing order seems too severe and counsel for the Plaintiffs suggests amending the existing order with the correct information, coordinated between the parties.

Respectfully submitted on March 7, 2007.

Memory & Day

By: /S/ James L. Day  
James L. Day  
ASB-1256-A55J

Von G. Memory  
ASB-8137-071V

Attorneys for Plaintiff

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### **CERTIFICATE OF SERVICE**

I hereby certify that I have this date served a copy of the foregoing document on the following, by:

- ☒ placing same in the United States Mail, postage prepaid, and properly addressed
- ☒ E-mail
- ☐ facsimile

☐ hand delivery

☐ delivered in open court

on March 7, 2007.

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560 South McDonough St.  
Montgomery, Alabama 36104

/S/James L. Day  
James L. Day